

**WATER MARKETING POLICY OF THE
COLORADO RIVER WATER CONSERVATION DISTRICT'S
COLORADO RIVER WATER PROJECTS ENTERPRISE**

October 19, 2005

All Prior Versions Superseded

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1. PURPOSE OF MARKETING PROGRAM. The Colorado River Water Conservation District's ("District") Colorado River Water Projects Enterprise ("Enterprise") as confirmed by Resolution of the District's Board dated October 19, 1999, is authorized and directed to provide for the beneficial use of water available for use from the Enterprise's storage capacity in Wolford Mountain Reservoir and other sources of supply such as Eagle Park Reservoir. The Enterprise's Board of Directors has approved the marketing of such water and other Enterprise water supplies as may be used to complement the use of such Reservoirs' water supplies through a contracting program described herein. Enterprise Board Motion dated December 1, 1995 initially approved this Policy; and Enterprise Board Motions dated July 22, 1998, January 20, 1999, October 20, 1999, April 19, 2000, January 17, 2001, September 19, 2002, December 6, 2002, March 12, 2003, April 15, 2003, and April 21, 2004 revised and re-adopted this Policy.
2. AUTHORITIES UNDER PROGRAM.
 - a. The General Manager is delegated the authority of the Board to implement and administer this Policy and the water supply contracts and assignments made pursuant to this Policy subject to the several specific reservations of Board authority stated herein. The General Counsel shall assist in the negotiation and drafting of the Water Supply Contracts.
 - b. The President or General Manager is authorized by the Board to execute the Water Supply Contracts made pursuant to this Policy on behalf of the Enterprise without further Board actions.
 - c. The General Counsel is directed and authorized to oppose Water Court applications which propose use of the Enterprise's water supplies without the existence of a current Water Supply Contract or otherwise at variance with this Policy.
3. SOURCES AND SCOPE OF MARKETING PROGRAM.
 - a. Sources.
 - i. "Colorado River Supply". Water delivered from Wolford Mountain Reservoir, for which storage water right decrees were obtained by the River District in Cases No. 87CW283, 95CW281, and 98CW237, District Court for Colorado Water Division No. 5, and for which additional storage water right decrees may be obtained in the future by the River District in Case No. 03CW192 or other cases; and water available from the River District's contractual right to water deliveries from Ruedi Reservoir.
 - ii. "Eagle River Supply". Water delivered from Eagle Park Reservoir or Homestake Reservoir and other supplies available to the River District as a shareholder in the Eagle Park Reservoir Company.
 - b. Volumetric.

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- i. Colorado River Supply. Based upon the program's "Hydrology Assumptions," also approved by the Board Motion dated December 1, 1995, and attached as Appendix "A" to the Policy as originally adopted on that date, up to but not more than 10,000 acre feet of Wolford Mountain Reservoir water per Project Year shall be available for contracted delivery by the Enterprise. The entirety of the amount of water contracted by the Enterprise from the U. S. Bureau of Reclamation for delivery from Ruedi Reservoir shall be available for delivery by the Enterprise as a component of this supply.
 - ii. Eagle River Supply. Based on the availability of 250 acre feet of average annual yield from Eagle River sources, not more than 250 acre feet of Eagle River sources water per Project Year shall be available for contracted delivery by the Enterprise.
 - c. Geographic. The Enterprise may enter into contracts with third parties for use of Enterprise water supplies directly, or by exchange or augmentation, within or outside of Colorado Water Division No. 5, but only within the state of Colorado, subject to site-specific determination by the District's General Manager and General Counsel of the legal and physical feasibility of such use and subject to the principles stated herein. The Enterprise will not contract to provide a water supply to any parcel of land that was previously served with water rights that were conveyed out of Water Division No. 5, absent express approval of the Enterprise Board of Directors.
 - d. Conservancy District Programs. Several water conservancy districts are located within the District. The Basalt Water Conservancy District, Middle Park Water Conservancy District, and West Divide Water Conservancy District have implemented or plan to implement water supply programs for the types of water use authorized by this Water Marketing Policy. In the interest of promoting maximum beneficial use of water within the District, it is appropriate to relate the Enterprise's water marketing program with the water supply programs and service areas of conservancy districts within the District in order to ensure the legal and financial integrity of all of those programs. The following principles are adopted in regard to such conservancy district water supply programs.
 - i. The Enterprise recognizes the conservancy districts' first right to serve retail users within their service areas. The Enterprise may enter into contracts with that category of users within a conservancy district's service area which has an existing program to serve such users only if that conservancy district is unable or unwilling to provide service.

- ii. Unless the Enterprise has entered into an agreement with a conservancy district by which that district will provide Enterprise supplies to wholesale users within a defined service area, the Enterprise may only enter into contracts with wholesale users which require a Water Supply Contract in excess of 50 acre feet annually within any conservancy district's service area.
- iii. The Enterprise may enter into contracts with the conservancy districts so that those districts can use Enterprise water in their water supply programs.
- iv. The Enterprise will give notice to conservancy districts and other interested persons at such times when the Enterprise has entered into contracts which total approximately 50% and 75% of available Enterprise Colorado River Supply.
- v. As a condition of the application of these principles regarding a specific conservancy district, such conservancy district's service area shall be defined by a map and explanatory information presented to the Enterprise by the conservancy district, which map and information are acceptable to the General Manager or to the Enterprise's Water Supply Projects Committee.

4. NATURE OF WATER SERVICE.

- a. Contract Form. The Enterprise shall provide water supply for agricultural and for municipal and industrial uses pursuant to contracts in the form attached hereto as Appendix "B". That form of the Water Supply Contract shall be used for all Contract applications made on and after the date of the adoption of this Policy as revised, and that form also may be used for Contract applications which are in progress as of such date if the Contract applicant agrees. The Board reserves the authority to modify the substance of the Water Supply Contract on a case-by-case basis. The General Manager and General Counsel may make nonsubstantive changes to the Contract on a case-by-case basis in order to tailor that Contract to specific situations.
- b. Type of Service. Service is "wholesale," which means that the Enterprise will deliver water at the outlet of the Enterprise's storage facilities into a stream system and that the user is responsible at the user's sole cost for arranging and obtaining the legal use or credit.
- c. Primary Sources of Supply. As previously described in subparagraph 3.a. above, the Enterprise's supply of water for the program described herein is anticipated to derive substantially from the following sources of supply:
 - i. Colorado River Supply. The Enterprises's portion and share of the yield of Wolford Mountain Reservoir, located on Muddy Creek, a tributary of the Colorado River; and the Enterprise's yield from Ruedi Reservoir, located on the Fryingpan River, a tributary of the Roaring Fork River/Colorado River system, pursuant to existing and anticipated future contracts between the

Enterprise and the U.S. Bureau of Reclamation. The Enterprise's Ruedi Reservoir supply is operationally bundled with its Wolford Mountain Reservoir supply, and the Water Supply Contract allows the Enterprise to deliver Colorado River Supply from either Wolford Mountain Reservoir or Ruedi Reservoir if suitable to physically meet the Contractor's needs or the calling right. Contractors are therefore advised to include both Wolford Mountain Reservoir and Ruedi Reservoir in any augmentation, exchange, and/or temporary substitute supply plan(s) that rely on the Enterprise's Colorado River Supply.

- ii. Eagle River Supply. The Enterprise's yield from Eagle Park Reservoir, located in the headwaters of the Eagle River, as a Class A shareholder in the Eagle Park Reservoir Company; and the Enterprise's yield from Homestake Reservoir, located on Homestake Creek, a tributary of the Eagle River, as a Class B shareholder in the Eagle Park Reservoir Company. The Water Supply Contract allows the Enterprise's Colorado River Supply to be substituted for Eagle River Supply to satisfy calls by senior water rights downstream of the confluence of the Eagle and Colorado Rivers. Applicants are therefore advised to include the Enterprise's Colorado River Supply in any augmentation, exchange, and/or temporary substitute supply plan(s) that rely on the Enterprise's Eagle River Supply.

- d. Alternate Sources of Supply. The Enterprise may, in its discretion, provide water from alternate sources, provided that the releases from alternate facilities are suitable to physically meet the calling water right.

5. CONTRACTING PROCESS AND TERMS.

- a. Timing. As to particular sources of supply, the Enterprise shall not execute any contracts until that source has been legally acquired by the Enterprise and all needed permits satisfactory to the General Manager have been issued by appropriate agencies and received by the Enterprise. Pending legal acquisition of and the receipt of all permits for a particular source of supply, the Enterprise will process contract applications for such source but will defer contract execution.
- b. Applications and Fees.
 - i. Prospective Contractors shall make written application to the Enterprise on forms prepared by Enterprise staff and approved by the General Manager and General Counsel. Such completed application forms shall be accompanied by the Contractor's nonreimbursable payment to the Enterprise of \$250 as the fee for the Enterprise's processing of the application for approval, but, if the Contractor has filed a Water Court application without having executed a Water Supply Contract and the District has opposed that Application as provided in subsection 2.c. above, at the General Manager's discretion the Contractor's application fee shall be \$500.

- ii. The General Manager will impose a fee of \$250 for contract amendments and assignments.
- c. Verification of Need. The application process shall include a description by the contract applicant of the nature of its water service, its places of use, its available water rights and supplies, and need for Contracted Water. The need of the contract applicant for program water in the quantity requested shall be verified by the General Manager, in consultation with the General Counsel as necessary. If the General Manager determines that all or any portion of a water contract request is not based upon legitimate need, the General Manager shall report that finding to the Enterprise Board, and the Board will allow the contract applicant to present written information in support of its claimed need. The Board's decision on such matters shall be final.
- d. Consistency with Conservancy District Programs. The General Manager and General Counsel shall review all contract applications for consistency with the principles stated herein and in any separate agreements regarding water conservancy district water supply programs.
- e. Minimum and Maximum Quantities. The minimum amounts of water which may be contracted pursuant to this Policy shall be not less than 0.1 acre foot annually. The maximum amounts of water which may be contracted to each entity pursuant to this Policy shall be as set forth below unless otherwise approved by the Enterprise Board on a case-by-case basis. A municipality may accumulate greater than 20 acre feet of Eagle River Supply if it requires as a condition of annexation the conveyance of an existing water supply contract for Eagle River Supply to serve the annexed parcel. Contracts shall be rounded off in one-tenth acre foot units.

Source	Maximum
Colorado River Supply	1,000 AF
Eagle River Supply	20 AF

- f. Project Year. The basis for calculating payment and delivery obligations shall be "Project Year" or multiples thereof, which shall be the period from July in one year through June in the succeeding year.
- g. Terms of Contracts. Two options are available for Contract terms.
- Full Term: Contracts for five years to a maximum of 40 years from the date of execution of the Contract, with right to renew for an additional 35 years, shall be considered full-term contracts.
 - Interim: Contracts for five years or less from the date of execution of the Contract shall be considered interim-term contracts. Water for out-of-basin uses will be offered on an interim basis only.

- h. Pricing. The pricing for Program Water is intended to recover the costs of Program operation and maintenance ("O&M") and to provide monies to be used for future water project development activities within the District. Two alternative methods of payment are possible. First, the "Annual Payment" method involves an annual payment to be made each Project Year for the amount of Contracted Water. Second, the "Upfront Payment" involves a one-time initial payment for the full amount of the Contracted Water over the entire term of the Contract followed by annual payments for operation and maintenance ("O&M"). The approved pricing for both of these methods is established below and in subparagraph i. below.

COLORADO RIVER SUPPLY		
	Annual Payment	Up-Front Payment
Full Term (1)	\$125 per AF/year	\$900 per AF + \$25 per AF/year
Interim M&I (2)	\$75 per AF/year	Not Available
Interim agricultural (3)	\$25 per AF/year	Not Available
Out-of-basin (4)	\$500 per AF/year	Not Available

The Full Term Annual Basis price (\$125/AF/Year) includes \$25 per year for project O&M, which will automatically escalate during the contract based on a Consumer Price Index (5), and a fixed \$100 per year development fee. The development fee will not increase during the contract term but can be modified for future contracts from time to time by the Board's revision of this Water Marketing Policy.

EAGLE RIVER SUPPLY (Limited Supply—Inquire First)		
	Annual Payment	Up-Front Payment
Full Term M&I (1)	\$513 per AF/year	\$6,700 per AF + \$51 per AF/year
Interim M&I (1)	\$400 per AF/year	Not Available

The Full Term M&I Annual Basis price (\$513/AF/Year) includes \$51 per year for project O&M, which will automatically escalate during the contract based on a Consumer Price Index (5), and a fixed \$462 per year development fee. The development fee will not increase during the contract term but can be modified for future contracts from time to time by the Board's revision of this Water Marketing Policy.

- i. Minimum Charges. Since either Supply can be contracted for in amounts measured in tenths of an acre foot, the charge for water, either annual or up-front, will be based upon the amount contracted for times the applicable price, except that the minimum annual billing for any type of service shall be \$50.00, which amount shall escalate in the same manner as provided in subparagraph h. above.
- j. Conversion to Upfront Payment. Within three (3) years after execution of an Annual Payment Contract, the Contractor may convert to an Upfront Payment by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment. In order for a governmental entity to take

advantage of this option, it must provide to the River District documentary evidence that it has the legal capacity and authority to make the Contract a binding multi-year financial obligation for the full term of the Contract and that it has taken all necessary and appropriate actions to so bind itself.

- k. Partial Year Payment Deferral. If the Contractor requests an “Annual Basis” contract to commence during a Project Year in which it does not desire to have water delivered under its Contract, upon execution of the Contract the Contractor may defer the District’s delivery obligation until the next full Project Year and thereby also may defer its payment obligation until payment is due for that next full Project Year.
 - l. Contract Execution. The applicant(s) for a Water Supply Contract shall have 60 days after mailing of the final Contract document to them in which to execute the final Contract and deliver the executed originals to the District’s offices. If such execution and delivery are not accomplished in that time, the applicant shall be deemed to have rejected the District’s offer to contract.
 - m. Limitation on Disposition. Contractors may not sublet, sell, donate, loan or otherwise dispose of any of its rights to a Contract or Contracted Water without written notice to and the prior written approval of the Enterprise. The Enterprise will approve such disposition in all instances in which the Contractor is transferring the water system which supplies the Contracted Water, or a permanent transfer of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners’ association or special district created to serve the property originally represented to the Enterprise to be served with the Contracted Water. Any disposition of a Contractor’s rights to a Contract or Contracted Water must be by written instrument signed by the Enterprise. An example of a Contract Assignment form is attached hereto as Appendix “C.” As provided in subparagraph 5.b.ii. above, a \$250 fee will be imposed for each contract assignment.
6. SHORTAGE CRITERIA. Water shortages among the Enterprise’s Contractors shall be apportioned in the following sequence:
- (1) One-year and out-of-basin contracts first are pro-rata shorted up to 100%.
 - (2) Interim agricultural contracts for two to five years are then pro-rata shorted up to 100%.
 - (3) Interim M&I contracts for two to five years are then pro-rata shorted up to 100%.
 - (4) Non-firm contracts, when and if authorized by the Board, next are pro-rata shorted up to 33%.
 - (5) All remaining contracts then are shorted as necessary on a pro-rata basis.

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7. DELIVERY CONTINGENCIES. There are several assumptions upon which the Enterprise's ability to deliver water pursuant to this Water Marketing Policy are contingent.
- (1) Terms and conditions of applicable Water Court decrees for the sources of supply.
 - (2) Terms and conditions of permits for all of said sources of supply and their related facilities.
 - (3) The District's and Enterprise's authorities pursuant to the River District Organic Act, C.R.S. §37-46-101, *et seq.*, and other applicable Colorado Constitutional and statutory provisions, including the Water Activity Enterprise Act, C.R.S. § 37-45.1-101, *et seq.*
 - (4) Terms and conditions of any substitute supply plans and plans for augmentation or exchange regarding Contractors' use of the sources of supply.
8. HYDROLOGY ASSUMPTIONS. The Enterprise has based its marketable yield for firm contracts on providing full delivery in a simulated 1977 water year. The Enterprise retains the authority to increase the marketable yield provided it does not result in shortage to firm contracts in the simulated 1977 water year, using the same hydrologic assumptions.

ENDNOTES:

- (1) Water deliverable in the full contracted amount under 1977 conditions as more specifically described in the Hydrology Assumptions.
- (2) Interim M&I water includes \$25/AF/Year for project O&M and \$50/AF/Year development fee.
- (3) Interim agricultural and other interim West Slope uses.
- (4) Water for out-of-District use; approved by Board on case-by-case basis.
- (5) Boulder-Denver-Greeley Metro Area Consumer Price Index ("all items").